

JCB

**PROOF OF SERVICE**

I am a citizen of the United States, employed in the County of Alameda. My residential address is 1160 Eddy Street, Apt. B, San Francisco, CA 94109. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

- **NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

On March 18, 2016, I served the foregoing document(s) on the parties listed below by placing copies thereof in sealed envelopes addressed as shown below for service as designated below:

**VIA CERTIFIED PRIORITY EXPRESS MAIL**

Hooven & Co.  
David and Patrick Hooven  
3445 Central Avenue  
McKinleyville, CA 95519

**VIA U.S. CERTIFIED MAIL**

Lisa Jackson, Administrator  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Thomas Howard  
Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812

Matthias St. John  
Executive Officer  
North Coast Regional Water Quality  
Control Board  
5550 Skylane Blvd., Ste. A  
Santa Rosa, California 95403

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 18, 2016, in San Francisco, California.



Riti Chandiok



March 18, 2016

**VIA CERTIFIED PRIORITY EXPRESS MAIL**

Hooven & Co.  
David and Patrick Hooven  
3445 Central Avenue  
McKinleyville, CA 95519

**RE: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of our client, Humboldt Baykeeper ("Baykeeper"), in regard to violations of the Clean Water Act occurring at the McKinleyville Ace Hardware and McKinleyville Ace Home and Garden stores located at 2707 and 2725 Central Avenue, McKinleyville, California (the "Property"), for work performed thereon by Hooven & Co. (collectively and individually, "YOU") on or about February 24, 2016. By this letter, our client gives YOU notice that YOU are in violation of the Clean Water Act. If these violations outlined below are not remedied within sixty days, our client intends to commence an enforcement action against YOU, seeking civil penalties, prohibitive and mandatory injunctive relief, as well as other appropriate relief including attorneys' fees and costs. If YOU believe any of the information in this letter is incorrect, please contact the undersigned immediately.

**I. Clean Water Act Background**

The Clean Water Act expressly prohibits the "discharge of a pollutant" unless such discharges comply with the terms of any applicable NPDES permit, and sections 301, 302, 307, 308, and 402 of the act. 33 U.S.C. §§ 1311(a)(1), 1342. "Discharge of a pollutant" means any "addition of a pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

The Clean Water Act prohibits the placement of dredged or fill materials to waters of the United States without a Section 404 Permit. 33 U.S.C. §§ 1342(a), 1344. Section 404 permits are issued and administered by the United States Army Corps of Engineers. *See* 33 C.F.R. §§ 323.1-323.6. "Waters of the United States" include a wide range of waterbodies, including "interstate



wetlands,” wetlands adjacent to navigable waters, and all other waters the “degradation or destruction of which could affect interstate commerce.” 33 C.F.R. §382.2.

Among other requirements, before commencement of any activity causing the dredge or fill of materials into waters of the United States, an applicant for a Section 404 permit must demonstrate that there is no practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, and that adverse effects are avoided and/or mitigated. *See* 40 C.F.R. §§ 230.1-230.98. “[P]racticable alternatives include, but are not limited to [a]ctivities which do not involve a discharge of dredged or fill material into the waters of the United States.” 40 C.F.R. § 230.10(a)(2).

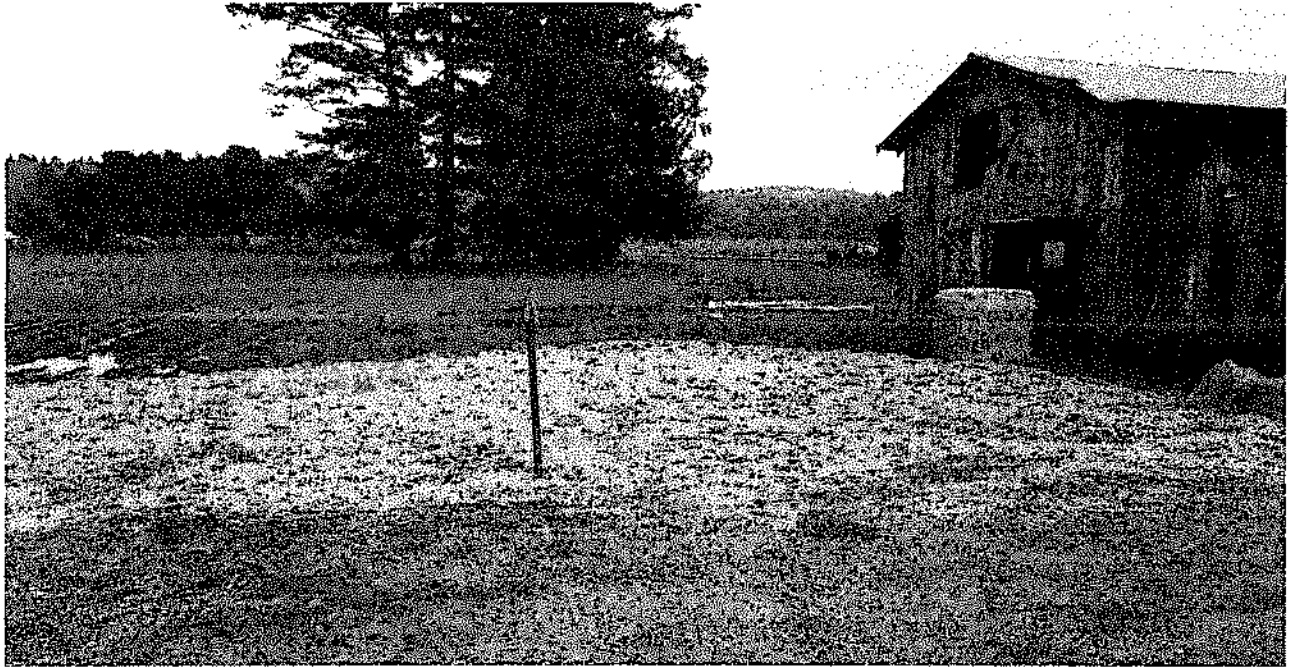
## II. Property Background

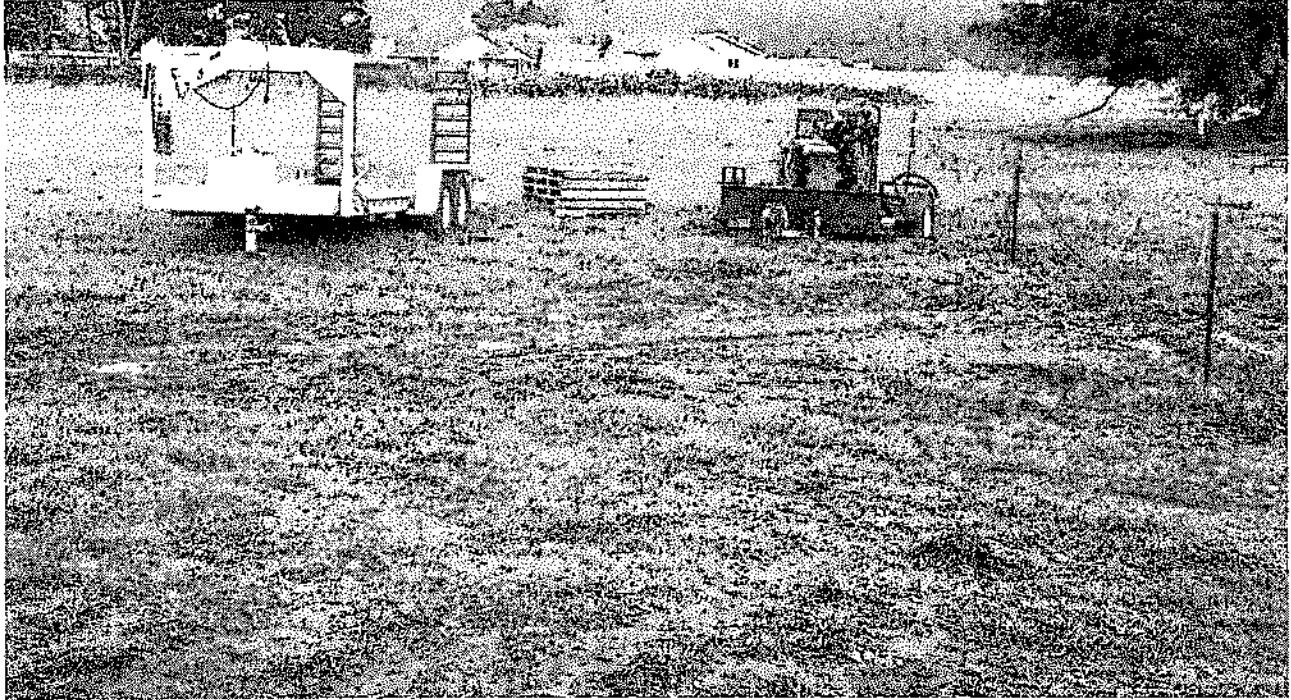
According to the United States Fish and Wildlife Service National Wetlands Inventory, the Property is situated on wetlands adjacent to White Widow Creek. White Widow Creek drains into the Mad River near the Pacific Ocean. Surface water is present at these wetlands for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

## III. Evidence of Unauthorized Fill

The following photographs of work at the Property show placement of fill material into the wetland the Property is situated on.







#### IV. Clean Water Act Violation

##### Unpermitted Placement of Fill into Waters of the United States

The Clean Water Act prohibits the discharge of dredged or fill materials to waters of the United States, including wetlands, without a Section 404 Permit. 33 U.S.C. §§ 1342(a), 1344. As discussed, above, on or about February 24, 2016, YOU have placed fill material into the wetlands the Property rests on, including gravel, without first obtaining Clean Water Act permit coverage for the dredge and fill of materials in waters of the United States. Therefore, YOU have failed to comply with the Clean Water Act's prohibition on the discharge of fill material into waters of the United States without a Section 404 Permit. 33 U.S.C. §§ 1342(a), 1344. YOU must obtain such a permit before continuing any further dredge or discharge of fill material into the wetlands the Property is situated on, including removal of the fill already illegally placed.

#### V. Conclusion

Our client hereby puts YOU on notice that, after the expiration of sixty (60) days from the date of this letter, our client intends to file an enforcement action against YOU for the violations described, above. Again, to the extent that YOU believe any of the information in this notice letter is inaccurate, we urge that YOU or YOUR representative(s) contact us at your earliest convenience. During the 60-day notice period, our client is willing to discuss effective



remedies for the violations noted in this letter, and actions that might be taken to ensure future compliance with the Clean Water Act. If YOU wish to pursue such discussions, it is suggested that YOU initiate those discussions immediately.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations. In addition to civil penalties, our client will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), our client will seek to recover costs, including attorneys' and experts' fees, associated with this enforcement action.

Humboldt Baykeeper is represented by the Aqua Terra Aeris Law Group in this matter. Please direct all communications to the counsel below:

Jason Flanders  
Aqua Terra Aeris Law Group  
409 45<sup>th</sup> Street  
Oakland, CA 94609  
916-202-3018  
jrf@atalawgroup.com

Very truly yours,

  
\_\_\_\_\_  
Jason R. Flanders  
**AQUA TERRA AERIS LAW GROUP**



**SERVICE LIST**

**VIA U.S. CERTIFIED MAIL**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington D.C. 20460

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